

BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Simitian	SB 364

SUBJECT

State Agencies Disclose Any Breach Of Security Of Data Systems to Owners or Licensees of the Personal Information

SUMMARY

This bill would require a state agency to include additional information in the current statutory notice of breach of an information system.

PURPOSE OF BILL

According to the author's office, the purpose of this bill is to strengthen existing breach of security laws.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2009, and as specified in the bill, would only be operative if AB 1656 of the 2007-08 Regular Session is enacted and takes effect on or before January 1, 2009.

ANALYSIS

STATE LAW

Under current state law, any agency that owns or licenses computerized data that includes personal information and that experiences a breach of security of the system containing that data must notify the affected individuals that their unencrypted information may have been or is reasonably believed to have been acquired by an unauthorized person. Notification of the breach of security can be provided by written notice, by electronic notice, or by substitute notice if the cost of providing the notice would exceed \$250,000 or involves a class of affected persons in excess of 500,000 persons. Substitute notice can be accomplished by e-mail notification, by posting of the notice in a conspicuous place on the agency's web site, or by notifying major statewide media.

Brian Putler, FTB Contact Person (916) 845-6333 (Office)	Executive Officer Selvi Stanislaus	Date 9/03/08
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THIS BILL

This bill would apply to any person, business, or agency (entity) that accepts credit cards, debit cards, or other payment devices for payment of goods or services. If the entity is required to give notice of a breach of security of a system containing personal information to the owner or the licensee of the information (owner) that was breached, this bill would require that the following additional information be in that notice, if available, at the time the notice is provided:

- The date of the notice.
- The name of the entity that maintained the computerized data at the time of the breach.
- The date, estimated date, or date range when the breach occurred.
- A description of the categories of personal information that were or are believed to have been acquired by an unauthorized person.
- A toll-free telephone number for the entity that experienced the breach or if its primary method of communicating with individuals is electronic, an e-mail address that the individual may use to contact the entity. If the entity does not have a toll free number, a local telephone number may be provided to the owner..
- The toll free telephone number and addresses for the major credit reporting agencies.

The bill would provide that the notice may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The bill would provide that notification can be made after the law enforcement agency determines that it will not compromise the investigation.

The owner would be required to disclose to the California resident the information provided by the entity if any of the following exist:

- The owner is the issuer of a credit or debit card or the payment device used.
- The owner maintains the account from which the payment device orders payment.
- The owner is an agency required to provide notice to a California resident in the event of a breach

If the primary method that the entity uses to communicate with the California resident is through electronic mail, the owner would be allowed to use an e-mail address in lieu of a toll-free or local telephone number.

This bill would be operative only if AB 1656 of the 2007/2008 Regular Session is enacted and takes effect on or before January 1, 2009.

The provisions of this bill are applicable to state agencies that accept credit or debit cards or other payment devices in the sale of goods or services. Accordingly, FTB would interpret the bill to not apply to transactions with FTB where a taxpayer pays a tax obligation.

LEGISLATIVE HISTORY

AB 1656 (Jones 2008) would do the following:

- Establish payment related data retention requirements for specified state agencies,
- Require state agencies to provide specific information when notifying owners and licensees of personal information of a breach of security of a system containing personal information, and
- Provide that when substitute notice is used, a notice must be sent to the Office of Information Security and Privacy Protection (OISPP).

Enactment of AB 1656 is contingent upon SB 364 (Simitian 2008) being enacted and taking effect on or before January 1, 2009. AB 1656 was sent to enrollment on August 31, 2008.

AB 1779 (Jones 2008) would have prohibited a state agency from retaining payment related data and would require that a state agency provide the Office of Information Security and Privacy Protection (OISPP) with a copy of the notice sent to California residents when a breach of security of a system containing personal information has occurred. AB 1779 was held in the Senate Committee on the Judiciary.

SB 852 (Bowen, 2005/06) would have expanded notice requirements to taxpayers on security breaches of personal information from only computerized data to all forms of data maintained by agencies and businesses. This bill did not pass out of the Assembly Committee on Business and Professions.

SB 1279 (Bowen, 2003/04) would have required a state agency to provide a credit monitoring service to a person whose personal information was or may have been acquired by an unauthorized person due to a breach of security in a state agency's computer system. This bill did not pass out of the Assembly Committee on Business & Professions.

AB 700 (Simitian, Stats. 2002, Ch. 1054) established the notice requirements for breach of security of systems containing personal information.

FISCAL IMPACT

This bill would have a minor impact to department costs.

ECONOMIC IMPACT

This bill would not impact state income tax revenues.

APPOINTMENTS

None.

Support/Opposition

According to the Assembly Judiciary Committee analysis of the bill as amended June 18, 2008, the following support and opposition are noted:

Support:

California Department of Health Care Services
California School Employees Association
CALPIRG
Consumer Federation of California
Consumers Union
Electronic Frontier Foundation
Los Angeles County District Attorney's Office
Privacy Rights Clearinghouse
SEIU
Solano County Board of Supervisors

Opposition:

California Chamber of Commerce (to prior version of bill)
Reed Elsevier (to prior version of bill)

VOTES

Assembly Floor – Ayes: 57, Noes: 19

Senate Floor – Ayes: 30, Noes: 7

Concurrence – Ayes: 38, Noes: 2

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